

IN THE MATTER OF an appeal by Carol-Ann McLaine and William McLaine of a decision by the Rural Municipality of Miltonvale Park to issue a development permit for a private utility structure (solar array) on July 15, 2020.

DEVELOPERS' REPLY AND RECORD

1. Zach Stephens and Jade Stephens, (the “**Developers**”), have reviewed the Reply of the Rural Municipality of Miltonvale Park (the “**Municipality**”) in this matter and concur with its interpretation and application of the *Zoning & Subdivision Control Bylaw* (2019) (the “**Bylaw**”) outlined therein. Specifically, the Developers agree that:
 - a. The solar array development in question (the “**Development**”) is a private utility, and/ or a private utility structure, within the meaning of section 4.24(2) of the Bylaw;
 - b. The Development is therefore permissible in all zones, and no zone standards apply thereto; and
 - c. Both the Municipality and the Developers have complied with the procedural requirements of the Bylaw.
2. In relation to the Notice of Appeal, filed by the Appellants, the Developers further assert that:
 - a. At no point did they advise the Municipality or the Appellants that solar panels were to be attached to the roof of the Developers’ dwelling. On the contrary, both the Municipality and the Appellants were well aware of the proposed ground-mounted location prior to the commencement of construction;
 - b. The Development Permit was, upon issuance, properly posted in a place visible to the public, namely on a post on the Development site; and
 - c. The location of the Development not only meets, but exceeds, any and all setback requirements in the Bylaw which may be relevant to the Development.

3. The following information may also be of value to the Commission:

- a. At all times, the Developers have complied with the requirements of the Bylaw. They, and their contractor on their behalf, consulted at length with the Municipality prior to, and during, construction of the Development. They also sought advice from other professionals, including a surveyor and legal counsel, to ensure compliance with the law. The Developers understand that such conduct in fact runs contrary to some local practice where structures such as decks, mini-barns and even septic fields are sometimes constructed or re-located without planning permission or adherence to the Bylaw; and
- b. Further, the Developers, sometimes in the face of open hostility and intimidation by the Appellants, attempted to accommodate the Appellants' wishes and concerns, even going so far as to suggest a land swap so the Development could be located elsewhere, and planting a hedgerow of trees (as agreed to by the Appellants) to provide an aesthetically pleasing boundary line between the subject properties.

4. It is the position of the Developers that the development permit was properly granted in accordance with the Bylaw and the within appeal ought to be dismissed.

All of which is respectfully submitted this 18th day of September 2020.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and a small flourish.

Geoff Gibson
Counsel for the Developers

Encl: Record

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1. Final draft plan of Survey prepared by Bernard Land Surveys
2. Email containing Surveyor's transcript – July 17, 2020
3. Surveyor's notes (email attachment to July 17, 2020 email)
4. Email to Appellants re solar panel installation – July 6, 2020

INTENT OF SURVEY

THIS SURVEY DEPICTS THE EVIDENCE CONSIDERED IN THE DETERMINATION OF THE PERIMETER BOUNDARIES SURROUNDING LANDS IDENTIFIED AS PID 856922 AND PID 658559 AS WELL AS VISIBLE IMPROVEMENTS IN POSSESSION OF ZACHARY STEPHENS AND JADE STEPHENS.

NOTES CONTINUED

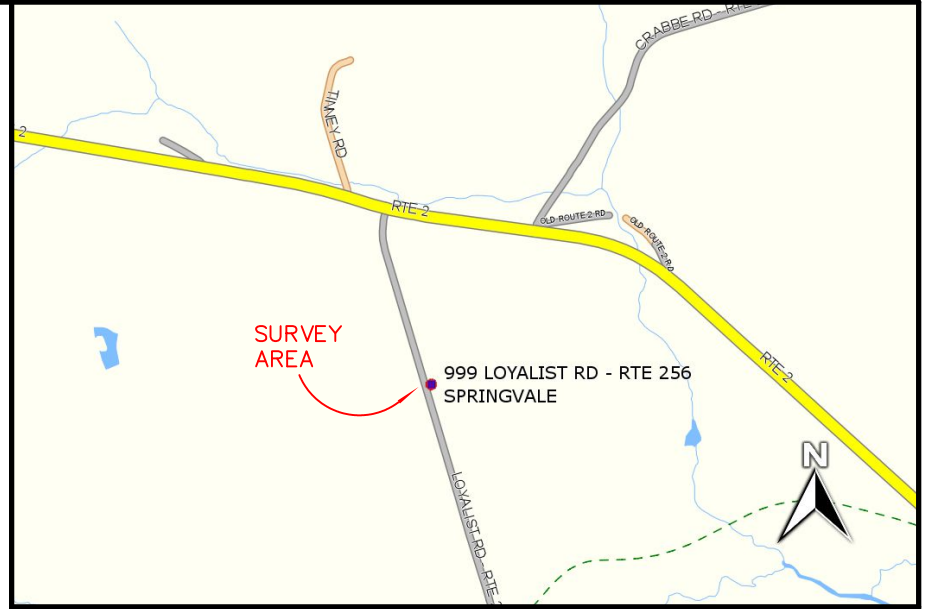
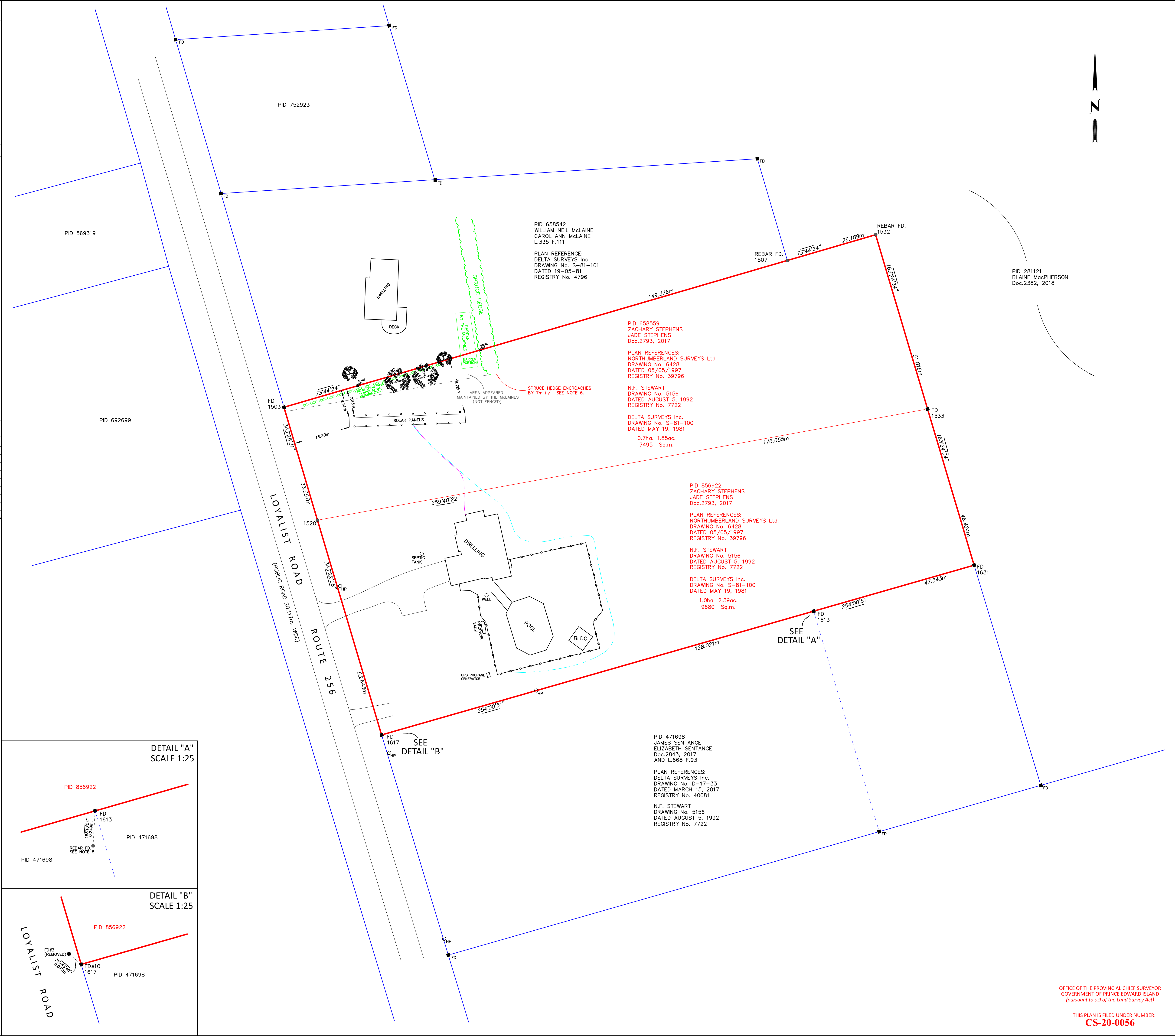
5. THE EVIDENCE SUGGESTS THAT THIS REBAR WAS LIKELY A SURVEY MARKER PLACED IN 1981 AS REPORTED ON PLAN BY DELTA SURVEYS Inc. DRAWING No. S-81-100. IT WAS NOT NOTED AS FOUND IN 1992 AS REPORTED ON PLAN BY N.F. STEWART DRAWING No. 5156 AND AS SUCH WAS NOT RELIED UPON AS A BOUNDARY MARKER IN SUBSEQUENT CONVEYANCES OF ADJACENT LANDS. THE BOUNDARY MARKER FOUND AT POINT 1613 WAS OBSERVED TODAY IN ITS LOCATION AS SET BY N.F. STEWART IN 1992.

6. ON JULY 2nd, 2020 Mr. WILLIAM McLAINE PROVIDED A STATEMENT ACKNOWLEDGING THE TRUE LOCATION OF THEIR MUTUAL BOUNDARY WITH THE STEPHENS AS WITNESSED BY THE MARKERS FOUND AT POINTS 1503 AND 1507. Mr. McLAINE ALSO ACKNOWLEDGED THAT THE HEDGE WAS ENCRDACHING ON THE STEPHENS PROPERTY AND STATED THAT ITS PRESENCE WAS CONTINUED WITH PERMISSION FROM EACH OF THE PREDECESSORS IN TITLE TO THE STEPHENS PROPERTY, INCLUDING THE GRANTS, THE REIDS, AND Mr. GAMEIRO.



COORDINATE TABLE		
POINT NUMBER	NORTHING	EASTING
1503	695423.882	381277.277
1507	695465.707	381420.678
1520	695391.711	381286.821
1532	695473.040	381445.819
1533	695423.381	381460.614
1613	695365.796	381428.165
1617	695330.539	381305.094
1631	695378.889	381473.870
Mon 3353	693774.020	381757.806

APPROVALS



LEGEND

FD LANDS DEALT WITH BY THIS PLAN
SM SURVEY MARKER FOUND
WIT SURVEY MARKER SET
WIT WITNESS SURVEY MARKER SET
X FENCE
X CALCULATED POINT
MON MONUMENT
WELL WELL
U/P UTILITY POLE
MH MANHOLE
CB CATCH BASIN

NOTES

1. PROPERTY REGISTRY INFORMATION SHOWN HEREON OBTAINED FROM THE GEOMATICS INFORMATION CENTRE, TAXATION AND PROPERTY RECORDS, A DIVISION OF THE PEI DEPARTMENT OF PROVINCIAL TREASURY.

2. THIS PLAN IS METRIC AND ALL DISTANCES ARE IN METRES UNLESS OTHERWISE SPECIFIED.

3. DIRECTIONS ARE AZIMUTHS REFERENCED TO GRID NORTH.

4. AZIMUTHS AND COORDINATES SHOWN ON THIS PLAN ARE REALIZED FROM A DOUBLE STEREOGRAPHIC PROJECTION REFERENCED TO NAD83 (CSRS) EPOCH 2010. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE CANADIAN GEODETIC VERTICAL DATUM (CGVD2013), AS ACCESSED FROM THE PRINCE EDWARD ISLAND ACTIVE CONTROL NETWORK. LOCAL PRINCE EDWARD ISLAND CONTROL MONUMENTS WERE ALSO OBSERVED AND THE VALUES SHOWN ON THIS PLAN ARE THE VALUES AS OBSERVED DURING THIS FIELD CAMPAIGN USING THIS NETWORK.

REVISIONS

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PLAN OF SURVEY

SHOWING PERIMETER BOUNDARIES AND VISIBLE IMPROVEMENTS ON LANDS IDENTIFIED AS PID 658559 AND PID 856922 IN POSSESSION OF

ZACHARY STEPHENS AND JADE STEPHENS

SPRINGVALE, TOWNSHIP 32
QUEENS COUNTY, PRINCE EDWARD ISLAND

JOB NO.: 20-020	FIELDWORK BY: S. BERNARD / A. RYAN
DATE OF PLAN: SEPTEMBER 12, 2020	SCALE: 1:500

CERTIFICATION

I, Serge J. Bernard, PRINCE EDWARD ISLAND LAND SURVEYOR DO HEREBY CERTIFY THAT THIS SURVEY WAS CONDUCTED UNDER MY DIRECT SUPERVISION, AND THAT THIS PLAN IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.

LAND SURVEYOR
No. 41
SERGE J. BERNARD
P. Eng. PEI
SEPTEMBER 12, 2020
DATE

PRINCE EDWARD ISLAND

OFFICE OF THE PROVINCIAL CHIEF SURVEYOR
GOVERNMENT OF PRINCE EDWARD ISLAND
(pursuant to s.9 of the Land Survey Act)

THIS PLAN IS FILED UNDER NUMBER:
CS-20-0056

Geoff Gibson

From: Geoff Gibson
Sent: September-18-20 8:31 AM
To: Geoff Gibson
Subject: FW: Signed statement from Willie McLaine
Attachments: IMG_20200710_0001.pdf

From: Bernard Land Surveys Inc. < >
Sent: July-17-20 8:22 PM
To: Zach Stephens < >
Cc: Jade Stephens < >; Geoff Gibson < >
Subject: Re: Signed statement from Willie McLaine

Here's a transcript and I've attached the statement:

William McLaine, DOB July 04, 1958.

- *Trees were planted before the home was built;*
- *William got the land 1979, a mobile home was put the following year;*
- *William knew Ted Knew that the hedge was over the boundary and Ted never had an issue with it. Ted said leave the hedge there, Doug Reid and Pedro as well were aware that he hedge was over the line and they were fine with it and told William to leave it there.*
- *William is aware of the true location of the boundary and has no issue with its location.*

This statement was read aloud to me and I agree and verily believe it to be true and correct.

Signed William McLaine.

S.16 of the Land Surveyors Act provides:

16. Powers of land surveyor respecting evidence

(1) A land surveyor has, with respect to all matters relating to the survey of lands and for better determining the corner, boundaries or limits or elevation of any county, township, polling district, section or other legal division of lot, parcel or tract of land, all the powers of a commissioner under the Public Inquiries Act R.S.P.E.I. 1988, Cap. P-31 for the examination and compelling of witnesses in relation to such matters.

Written evidence

(2) All evidence taken by a surveyor shall be (a) reduced to writing; (b) read over to the person giving the evidence; (c) signed by the person, or if he cannot write, acknowledged by him as correct before

two witnesses, who shall sign it; and (d) filed and kept in the offices of the land surveyor.
2001,c.10,s.16

Serge.

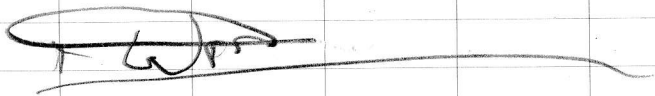
→ to leave it there.

- William is aware of the
true location of the Boundary
& has no issue with its location

~~to William~~

x 

This Statement was read
aloud to me & I agree &
verify believe it to be true
& correct.



Geoff Gibson

From: Geoff Gibson
Sent: July-06-20 10:16 AM
To: 'willndaisy@gmail.com'
Subject: Solar Panel Installation at Loyalist Road - M.B. Eye Construction

Good morning Mr. and Mrs. McLaine,

Please be advised that we have been approached by Matt Eye of M.B. Eye Electrical in relation to your recent communications about the solar panel installation at 999 Loyalist Road. Mr. Eye is the contractor responsible for the project.

We have been provided with a copy of a petition circulated by you to your neighbours, and others, over the last few days. This petition is of great concern to Mr. Eye. It contains a number of significant factual errors, implications of rule-breaking, and general misinformation. The combined effect of these, and the omission of relevant facts regarding the project, creates an impression of wrongdoing or carelessness on the part of Mr. Eye. Such defamatory communication is not just highly offensive to him but damages the good name of his business. Mr. Eye has installed such systems all across the Maritimes and has never had his integrity questioned like this before.

We therefore demand that you immediately cease and desist from further dissemination of such information to any person. This includes petitions, emails, phone calls, in-person conversations and any form of publication of messages related in any way to the construction of this project. We also expect that you will immediately take steps to lessen the damage caused by your communications to date.

We hereby advise that failure to take such remedial action, or to cease these communications which impact our client's reputation, may result in a claim against you for defamation.

Govern your self accordingly.

Geoff Gibson *

Partner



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www.campbelllea.com

*Practising through a professional corporation

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